

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Telephone Number:

In Re: Private Letter Ruling Request

Refer Reply To:
CC:PSI:B04
PLR-111378-12
Date:
August 29, 2012

Dear :

This responds to your personal representative's letter of March 8, 2012, requesting relief to void the allocation of your available generation-skipping transfer (GST) exemption to a transfer you made to a trust in 2010.

The facts and representations submitted are as follows. In 2010, you made a transfer to a trust established solely for skip persons. You retained a tax professional to prepare your 2010 Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return. Your available GST exemption was inadvertently allocated to this transfer on the Form 709.

Law and Analysis:

Section 2601 imposes a tax on every GST. Section 2602 provides that the amount of the tax imposed is the taxable amount (determined under subchapter C) multiplied by the applicable rate (determined under subchapter E).

Section 2611 defines a GST as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2612(c) defines the term "direct skip" as a transfer subject to the tax imposed by chapter 11 or 12 of an interest in property to a skip person.

Section 2613(a)(2) defines the term "skip person" as a trust if skip persons hold all interests in the trust or if there is no person holding an interest in the trust and at no time after such transfer may a distribution (including distributions on termination) be made from the trust to a non-skip person.

Section 2623 provides that the taxable amount in the case of a direct skip is the value of the property the transferee receives. Section 2624(a) provides that property is to be valued as of the time of the GST.

Section 2641(a) defines the term “applicable rate” as, with respect to any GST, the product of the maximum Federal estate tax rate and the inclusion ratio with respect to the transfer. Section 2641(b) provides that the term “maximum Federal estate tax rate” means the maximum rate imposed by section 2001 on the estates of decedents dying at the time of the taxable distribution, taxable termination, or direct skip, as the case may be.

Section 301(a) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, P.L. 111-312 (124 Stat. 3296) (TRUIRJCA), retroactively reinstated the GST tax for any GST transfer made after December 31, 2009. Section 302(c) of TRUIRJCA provides that in the case of any GST made after December 31, 2009, and before January 1, 2011, the applicable rate determined under ' 2641(a) is zero.

Notice 2011-66, 2011-35 IRB 184, section II.B provides that the taxpayer's timely filing of a Form 709 reporting an outright, inter vivos direct skip made in 2010 or the termination of an estate tax inclusion period (ETIP) in 2010, not in trust, other than by reason of the donor's death, is sufficient to prevent an allocation of GST exemption to that inter vivos direct skip. This section explains that:

Because it is clear that a 2010 transfer not in trust to a skip person is a direct skip to which the donor would never want to allocate GST exemption, the IRS will interpret the reporting of an *inter vivos* direct skip not in trust occurring in 2010 on a timely filed Form 709 as constituting the payment of tax (at the rate of zero percent) and therefore as an election out of the automatic allocation of GST exemption to that direct skip. This interpretation also applies to a direct skip not in trust occurring at the close of an [ETIP] in 2010 other than by reason of the donor's death. However, a donor may or may not want to allocate GST exemption to a 2010 direct skip made to a trust. Therefore, this interpretation will not apply to any transfer in trust that is a direct skip or that occurs at the end of an ETIP.

Based on the facts submitted and the representations made, we rule that the allocation of your available GST exemption to your 2010 transfer to the trust is void.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

James F. Hogan

James F. Hogan
Chief, Branch 4
(Passthroughs & Special Industries)

Enclosures:
Copy for section 6110 purposes

cc: